

No. 9/9/86-6Lab./9486.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Paramount Rubber Industries, 58-B, N.I.T., Faridabad :—

BEFORE SHRI S.B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 601/1983

between

SHRI BASSO CHAUDHARY, WORKMAN C/O FARIDABAD KAMGAR UNION REGD., 2/7, GOPY COLONY, OLD FARIDABAD AND THE MANAGEMENT OF M/S PARAMOUNT RUBBER INDUSTRIES, 58-B, N.I.T., FARIDABAD

Present:—

Shri M.K. Bhandari for the workman.

Shri R.C. Sharma for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Governor of Haryana referred the following dispute between Shri Basso Chaudhary, workman and the Management of M/s Paramount Rubber Industries, 58-B, N.I.T., Faridabad to this Tribunal for adjudication :—

Whether the termination of service of Shri Basso Chaudhary was justified and in order? If no, to what relief is he entitled?

2. After receipt of reference, notices were issued to the parties. The parties put in appearance. The case of petitioner is that he joined service with the management on 10th February, 1979. He proceeded on leave from 1st April, 1983 to 24th April, 1983, but he could not report for duty on account of illness and remained on medical leave from 24th April, 1983 to 13th June, 1983. He reported for duty on 16th June, 1983, but the factory was closed. He again reported for duty on 21st June, 1983, but was not taken on duty. He alleged that his services had been terminated in contravention of the provision of the Act and prayed for reinstatement with all back wages.

3. The case of the Management on the other hand is that the workman proceeded on leave from 11th April, 1983 to 24th April, 1983 on account of illness of his mother and thereafter he failed to report for duty. The Management waited for him and even sent letter requiring him to report for duty, but he failed to report for duty. Ultimately his name was removed from service with effect from 20th June, 1983. It was pleaded that the workman had left the service of his own accord and that the Management was justified in removing him from service. In the alternative it was also pleaded that the workman came to the factory. Later on he made request for settlement of his account and the Management paid him the dues, i.e., Rs. 3,108.70 Paise on 7th April, 1984 in full and final settlement of his claim and as such, the workman is not entitled to any relief.

4. The workman denied having received payment in full and final settlement of his claim in the rejoinder filed by him.

5. On the pleadings of the parties, the following issues were settled by Shri R.N. Batra, the then Presiding Officer, Industrial Tribunal, Haryana, Faridabad :—

- (1) Whether the claimant absented himself without prior permission as pleaded? OPM
- (2) Whether the claimant has settled his dispute and received the dues on 7th April, 1984 as pleaded? OPM
- (3) Whether the termination of services of the claimant is justified and in order? If not, to what relief is he entitled? OPM.

6. It may be mentioned that Shri R.N. Batra, the then Presiding Officer had passed an *ex parte* award in favour of the claimant on 13th December, 1984 and later on *ex parte* award was set aside on 15th July, 1985 on the order passed by Shri R.N. Batra, the then Presiding Officer.

7. The workman had examined himself as WW-1 and relied upon the documents Ex.W-1 to W-16. He also examined Siri Ram WW-2. On the contrary the Management examined Sat Pal MW-1, Accountant of their factory and Girdhari Lal, Supervisor MW-2. They also relied upon the documents Ex.M-1 to M-4.

8. I have heard the learned Authorised Representatives of both the sides and perused the record. My findings on the above issues are as under :—

Issue Nos. 1 and 3 :

9. Both these issues are interconnected and would be discussed together. It is admitted case of the parties that the workman had joined services of the respondent somewhere in 1979 and that his name was removed from the roll with effect from 20th June, 1983 on account of absence from duty. There is no dispute that the workman has been in continuous service for not less than one year under the employer when his name was removed from the rolls of the company.

10. The learned Authorised Representative of the workman contended that striking off name of the workman from the rolls on account of absence from duty amounted to termination from services and the same clearly fell within the ambit of section 2(oo) of the Act. He submitted that since the requirement of Section 25-F had not been complied with, the retrenchment was void *ab initio*. He placed reliance in support this proposition on the two Supreme Court Judgements:—

(1) Santosh Gupta Vs. State Bank of Patiala, 1980-II-LLJ page 72.

(2) Mohan Lal Vs. Bharat Electronics Limited, 1981-II-LLJ-Page 70.

This position of law is beyond scope of controversy. The termination by the employer of the services of the workman for any reason whatsoever constitutes retrenchment except in cases where the termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement or retirement of the workman on superannuation etc. This view is also supported by latest pronouncement of the Punjab and Haryana High Court in case of **Uttam Singh and Labour Court, Patiala**, 1986-FL-R.(52) page 605. Thus there can be no gainsaying the fact that the striking off the name of the workman from roll by the Management amounts to retrenchment which is void *ab initio*.

11. The learned Authorised Representative of the Management on the other hand invited my attention to para 16(4) of the Industrial Employment (Standing Order) Punjab Rules, 1969. The said rule is in the following term:—

16(4):—*Privilege or Earned Leave*:—If the workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless (1) he returns within 10 days of the commencement of the absence or the expiry of the leave and (2) explain to the satisfaction of the Manager the reason of his absence or his inability to return on the expiry of the leave, as the case may be.

In case he loses his lien on his appointment, he shall be entitled to be kept on the Badli list where there is Badli System.

He contended that since the workman absented himself from duty for the period of more than 10 days, he lost his lien on his appointment and that termination of his services was justified as it was in consonance with the provisions of Model Standing Orders. I am not convinced with this argument. The learned Authorised Representative of the management cited the case of **Buckingham and Carnatic Company, Ltd., versus Venkatayya and another**, 1963-II-L.L.J. page 638 (Supreme Court) and contended that absence of the workman led to automatic termination of his service. The ratio of this authority is not attracted to the instant case. The provisions of the standing orders in this authority are different. Even in case of **Delhi Cloth and General Mills Co. Ltd. versus Shambhu Nath Mukherji and others**, 1977, Lab., I. C. 1695, their Lordships of Supreme Court had observed that striking off the name of the workman from the muster rolls amounts to retrenchment with meaning of Section 2(oo) of the Act.

12. Thus the plea of the Management that absence of the workman led to automatic termination of services, his name having been struck off from the rolls is not tenable. If the workman was treated as absent from duty, he ought to have been proceeded against for the alleged misconduct of absence from duty and without compliance with the principle of natural justice, his services could not have been terminated. Thus I am of the view that termination of services of workman was not justified. The issues are answered accordingly.

Issue No. 2.

13. The workman has settled his claim and received a sum of Rs. 3108-70 paise,—*vide* receipt Ex. M-4. This receipt is provided by the testimony of Shri Sat Pal M W-1 who disbursed the amount. The amount was paid on 7th April, 1984. This receipt is attested by Shri Girdhari MW-2. He had also supported the version of Sat Pal MW-1. On the other hand the workman had denied having received this amount and settled his claim. Out of the conflicting versions, the version of the Management inspires confidence. The workman had admitted his signatures on the application Ex. M-3 in his examination-in-chief when he came in the witness box WW-1. This application is dated 27th March, 1984 and the workman has clearly stated therein that he wanted to settle his

claim and was relinquishing all his rights and asked the management to pay him, his dues. The Management after submission of this application had taken steps to calculate the legal dues of the claimant and then disbursed him the amount on 7th April, 1984,—*vide* receipt Ex. M-4. The claimant had clearly recorded in that receipt that he was receiving the amount in question in full and final settlement of the dispute. Mere *ipse dixit* of the workman that Ex. M-4 does not bear his signatures is, thus, without merit. Thus I hold that the workman had received Rs. 3,108.70 paise from the Management,—*vide* receipt Ex. M-4 on 7th April, 1984 in full and final settlement of his claim and relinquished all his rights arising in this Industrial Dispute.

14. In view of my finding on issue No. 2 above, the workman is not entitled to any relief. The award is passed accordingly. No order as to costs.

Dated the 29th September 1986.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 638, dated the 30th September 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-6Lab./9487.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal Faridabad, in respect of the dispute between the workman and the management of M/s Prem Metal Industries Sector 24, N.I.T. Faridabad.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD
Reference No. 20/1984

between

SHRI RAMAN LAL, WORKMAN C/O. SHRI R. L. SHARMA, I-K/16, N.I.T. FARIDABAD AND THE
MANAGEMENT OF M/S PREM METAL INDUSTRIES, SECTOR-24, N.I.T. FARIDABAD

Present—

Shri R.L. Sharma for the workman.

Shri G .S. Chaudhary for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Governor of Haryana referred the following disputes between Shri Raman Lal workman and the management of M/s. Prem Metal Industries, Sector 24, N.I.T. Faridabad to this Tribunal for adjudication:—

Whether the termination of services of Shri Raman Lal was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of order of reference notices of the same were issued to both the parties. The parties appeared. The case of the petitioner is that he was employed as Moulder with the respondent for the last 14 years. His services were illegally terminated on 22-12-1982 and was not allowed to join duty. He challenged the termination of his services and prayed for reinstatement with all back wages.

3. The respondent controverted the stand of the petitioner in the written statement filed by them. It was *inter alia* pleaded that the workman had entered into settlement alongwith other workers before Joint Labour Commissioner on 28-5-1982 and thereafter he had taken his full and final dues from the Management according to the settlement and thus is estopped to raise this Industrial Dispute. On merits, it was pleaded that the workman was an independent person and was doing his own business in the name and style of M/s. Raman Casting Works, Mujeshwar. The petitioner used to do the job work and supply material and raised bills. In other words, it was pleaded that he was not an employee of the respondent and therefore, the question of termination of his services did not arise.

4. The pleas taken in the written statement were controverted in the rejoinder filed by the workman.
5. On the pleadings of the parties, the following issues were settled by my predecessor Shri R.N. Batra, the then Presiding Officer, Industrial Tribunal, Haryana, Faridabad:—
- (1) Whether there is no Industrial Dispute between the parties as pleaded ? OPM
 - (2) Whether the workmen entered into settlement on 28-5-1982 and has taken his full and final settlement of his claim as pleaded ? OPM
 - (3) Whether the termination of service of Shri Raman Lal is justified and in order ? If not, to what relief is he entitled ? OPM

6. The petitioner examined himself as WW-1 and also produced on record document Ex. W-1 and W-2. The respondent examined Shri Badloo Ram, Partner of the respondent company and also produced on the record documents Ex. M-1 to M-9. Besides this the respondent also examined Shri Krishan Kumar as MW-2 and Shri Balbir Singh, Office Secretary, INTUC as MW-3. I have heard the learned authorised representatives of the parties and my findings on the aforesaid issues are as under:—

Issues No. 1 and 2

7. Both these issues are interconnected and would be discussed together. Ex. M-9 is the photostat copy of the settlement entered between the parties before Joint Labour Commissioner. From the perusal of the proceedings of it with the letter Ex. M-9, it is apparent that the respondent had agreed to pay Rs. 1,000 to each workman, namely, Shri Raghbir Singh, Raman Lal and Shri Giri Raj Singh in full and final settlement of their claim. Their stand was that the aforesaid persons were not their employees. This settlement was arrived at in the presence of the Joint Labour Commissioner. The copy of this settlement is also Ex. M-5. The authority of this settlement is proved by the testimony of Krishan Kumar, Clerk MW-2 and Shri Balbir Singh MW-3. Shri Balbir Singh is the authorised representative of the workmen. He has categorically stated that the demand notice was served by Shri Raghbir Singh, Giri Raj Singh and Raman Lal through their union and settlement between the workmen and the management took place at Canal Rest House, Faridabad before the Joint Labour Commissioner, Chandigarh, Camp at Faridabad on 28th May, 1982. He deviated from his stand in cross-examination and stated that the settlement had not been arrived at in his presence. Such variation made by Balbir Singh MW-3 in his cross-examination will not in any manner help the petitioner because Raman Lal, workman in pursuance of the above settlement received a sum of Rs. 1,000 on 10th June, 1982 and executed the receipt Ex. M-6. Balbir Singh who was the Authorised representative of the workmen has admitted that their receipt Ex. M-6 was attested by him. Even Raman Lal, workman in his testimony before the Court as MW-1 admitted that he had received Rs. 1,000 in the presence of his authorised representative Shri Balbir Singh. His *ipse dixit* that no settlement took place with the management cannot be accepted. His assertion that he had received Rs. 1,000 as arrears of pay is also without any merit because the receipt Ex. M-6 clearly shows that the amount was received by him in terms of the settlement, dated 28th May, 1982. Shri Raman Lal had not denied his signatures on receipt Ex. M-6. Thus it does not lie in his mouth to say that no settlement took place. In the light of foregoing discussion I hold that the workmen entered into settlement on 28th May, 1982 before Joint Labour Commissioner and thereafter received the amount in full and final settlement of his claim. Consequently he is estopped from raising the industrial dispute as no industrial dispute exists after the settlement. The issues No. 1 and 2 are answered in favour of the Management.

Issue No. 3.

8. Since issue No. 1 and 2 have been decided against the petitioner and no order of termination was passed by the respondent after settlement, there is no question of alleged order of termination being unjustified. Hence, in the result, the petitioner is not entitled to any relief. The reference is answered accordingly. There shall be no order as to cost.

Dated the 24th September, 1986.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 639, dated 30th September, 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as received under Section 15 the Industrial Disputes Act, 1947.

S.B.AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.